IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. Civil Second Appeal No.609 of 2006.

Kailash Bai & Others Vs. Babu Lal & Others.

Date of Order ::: 07/12/2006

Hon'ble Mr. Narendra Kumar Jain, J.

Mr. Ashwani Chobisa, Counsel for defendant-appellants.

By the Court :

Heard learned counsel for the defendant-appellants on the application under Section 5 of the Limitation Act for condonation of delay of 26 days in filing the second appeal as well as on merits of the case.

The plaintiff-respondents filed a suit for permanent injunction in the Lower Court, which was dismissed, but it was directed that in view of the finding of possession in favour of the plaintiffs, the defendants shall not dispossess the plaintiffs without due process of law. Being aggrieved with the same, an

appeal was preferred by the defendants to delete the condition that the plaintiffs will not be dispossessed without due process of law. The learned First Appellate Court dismissed the appeal of the defendants and confirmed the finding of the learned Lower Court.

I have heard learned counsel for the defendant-appellants and after considering his submission in the light of the findings of both the Courts below, I find that the controversial issues involved in the present case relate to the question of possession over the property, in dispute and there is a concurrent finding by both the Courts below in respect of possession of the plaintiffs, which is purely a question of fact. There is a concurrent finding of both the Courts below, which cannot be interfered with by this Court in second appeal under Section 100 of the C.P.C.

I have also considered the reasons given by the appellant for condonation of delay in filing the appeal, but I am not satisfied with the explanation given by the appellant for condonation of delay in filing the appeal. The application under Section 5 of the Limitation Act is dismissed.

No substantial question of law is involved in this second appeal.

Consequently, the second appeal is dismissed being barred by limitation as well as on merits also.

(Narendra Kumar Jain) J.